What is CSS?

- The Content Scramble System (CSS) is a proprietary copy protection system based on encryption licensed by the DVD Copy Control Association (DVD CCA) to protect copyrighted content on DVD video discs. It is the culmination of a cooperative effort by the consumer electronics, information technology and motion picture industries to enable the development of DVD technology while still protecting the valuable copyrights of the program content industry.

- DVD technology is a digital technology that allows consumers to enjoy motion pictures in their homes in a way they never have before. DVD technology provides clearer images, a more interactive viewing experience and dynamic multimedia features, including interviews with directors and actors and multiple languages.

- The CSS technology provides security for the program content industry. The availability of the technology encouraged the motion picture studios to release their copyrighted movies in this new digital format. Since October 31, 1996, when CSS technology first became available, hundreds of companies have entered into license agreements allowing them to use the CSS copy protection technology.

The Hack

- In late 1999, a Norwegian group called "Masters of Reverse Engineering," (MoRE) hacked a DVD software application in order to circumvent the CSS system. They used the information obtained through the hack to create an unauthorized program called DeCSS, that uses a copy of the CSS algorithm and keys to decrypt and enable playback and recording of CSS encrypted movies.

- MoRE has posted the CSS algorithm and keys on the Internet. Many copycat postings and additional hacks have followed. These postings violate the intellectual property rights (including patents, trade secrets and copyrights) of the CSS developers and facilitate the unauthorized copying of copyrighted movies. The posting of the CSS proprietary information also threatens the trade secret status of CSS and has the potential to disrupt licensing activities.

The Response

- In order to protect the trade secret status and ensure the continued viability of the CSS licensing system, on which several new technologies rest, DVD CCA filed suit against other individuals that posted the CSS proprietary information and the DeCSS utility, seeking a temporary restraining order and preliminary injunction. The request for a preliminary injunction will be argued in the Santa Clara, California Superior Court on January 14, 2000. This suit was brought in state court on trade secret grounds. Additional actions may be brought in federal court under the anticircumvention provisions of the DMCA.

Attorney Client/Work Product
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THE CSS HACK: FACT VERSUS FICTION

FICTION: Hacking CSS and creating DeCSS was within the fair use exception to the copyright law and the Digital Millennium Copyright Act (DMCA).

FACT: Many of the companies involved in creating the CSS technology and organizing the DVD CCA are among the strongest advocates of the fair use provision of copyright law and lobbied for the reverse engineering exception to the circumvention prohibition of the DMCA. The actions the defendants engaged in have nothing to do with fair use or the type of reverse engineering allowed under the DMCA interoperability provision or any other conduct authorized by these laws. These provisions do not authorize production of an unauthorized program based on the exact code of the reverse engineered program, especially where the unauthorized program is for the purpose of defeating an access control and copy protection technology.

DVD CCA is not pursuing actions against consumers that downloaded DeCSS; rather, DVD CCA is pursuing hackers that purposefully and knowingly violated the law, as evidenced by one of several notices left on a hacker's website, "Mark of the scofflaw! Here's my local copy of the CSS decryption software, enjoy!".

FICTION: Defendants had a First Amendment right to post and create links to the DeCSS program.

FACT: The First Amendment gives no license to steal intellectual property, including copyrighted works. Defendants are using the First Amendment as a foil to gain attention from legitimate organizations and deflect attention from their theft of intellectual property.

Defendants' First Amendment claims have no more merit than would a First Amendment claim by an individual who scanned copyrighted books into a computer and posted and created links to the contents of the book.

FICTION: Defendants are Linux operating system users who were "forced" to hack the CSS system because no Linux DVD players were available.

FACT: Defendants created a Windows player that allows the user to make a copy of a DVD movie, not a Linux player. Their argument is disingenuous.

If the defendants wish to create a Linux DVD player capable of reading encrypted DVD discs, they can apply to the DVD CCA for a license to use CSS. There are no known technical or legal inhibitions to such a licensed, authorized implementation.

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